

REMARKS

Reconsideration and allowance of the above-identified reissue application are respectfully requested. Claims 1-17, 19-21, 23-25, and 28-40 are currently pending. Claims 1-5 of the original patent have been indicated to be allowed.

Enclosed is a Supplemental Reissue Declaration as required.

Rejection under 35 U.S.C. §112

Claims 14-17, 19, 23-25, and 28-33 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The term "capable of" in Claim 19 has been objected to and has been removed by the forgoing amendment.

The Office Action states that Claims 14, 17, 19, 23, 24, and 40 appear to be duplicates of the existing independent claims. These dependent claims differ from the original independent Claims 1, 3, and 5 as for at least the following reasons.

Claim 14 recites a catheter including a balloon. Claim 14 also recites at least one hole distal to the balloon and at least one hole proximal to the balloon. The original Claim 1 does not describe the distal and proximal locations of the holes.

Claim 17 recites that the radiation source provides a radiation dose to the stenosed region through a window in the catheter. In contrast, original Claim 3 describes the window more specifically as a cut-out in a sidewall and includes a sheath covering the cut-out.

Claim 19 recites a balloon inflated by a fluid having the radiation dose means incorporated therein. In original Claim 1, the radiation dose means is not incorporated in a fluid in the balloon.

Claim 23 has been canceled.

Claim 24 recites a balloon with radioactive dose means incorporated into and enclosed within the material of the balloon. In contrast, Claim 1 does not describe the location of the dose means and Claim 2 recites that the dose means is distributed around the balloon.

Claim 40 has been canceled.

Rejections under 35 U.S.C. §102 and §103

In the Office Action, Claims 6, 7, 10, 11, 20, 21, 34, 35, 38, and 39 were rejected under 35 U.S.C. §102(b) as being anticipated by Lemelson. Claims 8, 9, 12, 13, 36, and 37 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Lemelson.

The rejected independent Claims 6, 10, and 34 each recite a treatment apparatus having a radioactive dose means and a positioning means. The positioning means is claimed as "configured to withdraw the... dose means from the artery" or "operatively connected to... the dose means for withdrawing the... dose means from the artery."

Lemelson describes a device for depositing a medication at a location in the body. The Lemelson device as is clearly described throughout the patent is an ejector or implanter for delivering a device or medication 37 into body tissue. (See column 1, lines 15-20 and 49-53, column 2, lines 32-36, 45, and 59-65). There is no teaching or suggestion in Lemelson to provide a device configured or connected to withdraw the dose means from the artery after use. Accordingly, the claims are allowable over Lemelson.

With respect to Claims 8, 9, 12, 13, 36, and 37 the Office Action states that a modification of Lemelson such that the radioactive source is a liquid or gas would have been obvious to one skilled in the art. Applicant respectfully disagrees. Lemelson specifically states that the material to be implanted with the device is a solid material. (See column 2, lines 32-33). There is no teaching or suggestion in Lemelson of using a liquid or gas medication. In addition, Lemelson is directed to placement of the medication at a predetermined position within the tissue. This predetermined positioning cannot be achieved with a liquid or gas medication which will move within the body duct once delivered.

New Claims 41-46 have been added to further define the protection to which applicant is entitled.

All outstanding matters in the Office Action are believed to be addressed by the foregoing amendments. In the event that there are any questions concerning this

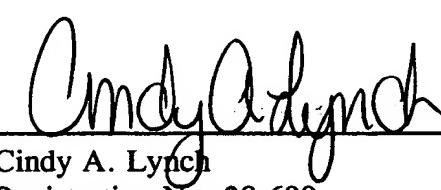
Application No. 08/850,073
Attorney's Docket No. 011683-012
Page 5

Amendment, or the application in general, the Examiner is respectfully urged to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By:


Cindy A. Lynch
Registration No. 38,699

P.O. Box 1404
Alexandria, Virginia 22313-1404
(650)622-2300

Date: June 21, 2002